

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Michelle Wei
22 Eldridge Drive
East Brunswick, NJ 08816

(b) County of Residence of First Listed Plaintiff Middlesex

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

The Home Depot, Inc.
401 S. Main Street
Milltown, NJ 08850

County of Residence of First Listed Defendant Middlesex

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Graham F. Baird, Esq., Law Office of Eric A. Shore
2 Penn Center, 1500 JFK Blvd, Suite 1240, Philadelphia, PA 19102
Tel: 267-546-0131

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C.A. § 2000e-2(a)

Brief description of cause:

Employment Discrimination

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

 DEMAND \$
150,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

4. At all times material hereto, Defendant is an owner, operator, proprietor and manager of a Home Depot business located at 401 South Main Street, Milltown, New Jersey.

5. Defendants qualify as Plaintiff's employer pursuant to the United States Fair Labor Standards Act, Title VII of the Civil Rights Act and as defined under New Jersey Law.

6. This action is instituted pursuant to the Age Discrimination in Employment Act, Title VII, Americans with Disabilities Act, the New Jersey Law Against Discrimination, and New Jersey common law.

7. Plaintiff has exhausted her administrative remedies pursuant to the Equal Employment Opportunity Act. (See Exhibit A, a true and correct copy of a "right-to-sue" letter issued by the Equal Employment Opportunity Commission)

8. This action is instituted pursuant to New Jersey common law and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12, and title VII of the Civil Rights Act and applicable federal and state law.

9. Jurisdiction is conferred by 28 U.S.C. §§ 1331 and 1343.

10. Supplemental jurisdiction over the Plaintiff's state law claims is conferred pursuant to 28 U.S.C. § 1367.

11. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because Defendants conduct business in this district, and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district. Plaintiff was working in the District of New Jersey at the time of the illegal actions by Defendants as set forth herein.

II. Operative Facts.

12. In or around June of 2002, Plaintiff, currently a sixty (60) year old woman, was hired as a sales associate for a Home Depot store located in Milltown, New Jersey.

13. Shortly after her return to work following a hip surgery, Plaintiff was moved to the paint department, one of Defendant's more physically demanding positions due to the lifting and climbing required, however Plaintiff persevered and was able to perform her job.

14. Beginning in or around early 2015, a young male employee of Defendant known to Plaintiff as "Samir" was moved to her department.

15. As Plaintiff had now been working in the paint department for a few years, she trained Samir.

16. Samir became belligerent towards Plaintiff's training efforts and would claim that he "didn't need to do that" when Plaintiff attempted to train him.

17. During one such exchange, Samir became so irate he offered to "duke it out" with Ms. Wei outside.

18. Plaintiff also witnessed several instances of Samir displaying a hostile attitude toward female customers in the store, telling them the items they were looking for "didn't exist" when they did, or calling their planned projects "stupid."

19. Plaintiff made a complaint to her assigned department supervisor Edgar McGee, detailing Samir's hostile treatment toward women, including herself and female customers.

20. Defendant's store manager James Craig learned of Plaintiff's complaint and opted to continue Samir's employment.

21. As a result, Samir was ordered not to have any further contact with Plaintiff.

22. Samir disregarded this order and would walk over to where Plaintiff was working, and would physically place himself in front of equipment that Plaintiff needed.

23. On or about July 26, 2016, Plaintiff came in for her scheduled shift, but was unable to clock in immediately because she was helping a customer.

24. Plaintiff subsequently filled out a time sheet correction form, estimating her arrival time as 6:05am.

25. On or about August 10, 2016, Plaintiff was contacted by Loyce Riggins, Defendant's Human Resources representative, who indicated Plaintiff was being terminated for "falsifying time sheets."

26. Ms. Riggins indicated that on the date in question, the security camera at the front entrance showed Plaintiff's actual arrival time at 6:07am.

27. Upon information and belief, a younger employee who had only worked with Defendant a year also had an incorrect time sheet but had only received a written warning.

28. Additionally, Defendant's attendance policy indicated that eight (8) accrued latenesses within a six (6) month period would be grounds for a warning only.

29. At the time of her termination, Plaintiff had only accrued approximately five (5) latenesses and had not been warned nor written up for lateness in several years.

30. At all times material hereto, Defendant was hostile to Plaintiff's age and her complaint of sex discrimination.

31. As a direct and proximate result of Defendant's conduct, Plaintiff sustained great economic loss, future lost earning capacity, lost opportunity, loss of future wages, as well personal injury, emotional distress, humiliation, pain and suffering and other damages as set forth below.

III. Causes of Action.

COUNT I – EMPLOYMENT DISCRIMINATION - RETALIATION (42 U.S.C.A. § 2000e-2(a))

32. Plaintiff incorporates paragraphs 1-31 as if fully set forth at length herein.

33. As set forth above, by making complaints of sex discrimination, Plaintiff was engaged in protected activity under Title VII of the Civil Rights Act.

34. Defendants took adverse action against Plaintiff by terminating her employment.

35. As set forth above, Plaintiff's participation in protected activity was a motivating factor in Defendant's decision to terminate her employment.

36. Plaintiff's membership in a protected class was a motivating factor in Defendants' decision to terminate her employment.

37. As such, Defendants' decision to terminate Plaintiff's employment is an unlawful employment practice, under 42 U.S.C. § 2000e-2(a).

38. As a proximate result of Defendants' conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, mental anguish, humiliation, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of earning power and capacity and a claim is made therefore.

39. As a result of the conduct of Defendants' owners/management, Plaintiff hereby demands punitive damages.

40. Pursuant to the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a), et seq Plaintiff demands attorney fees and court costs.

COUNT II—AGE DISCRIMINATION IN EMPLOYMENT ACT
29 U.S.C.A. §621, et seq.

41. Plaintiff incorporates paragraphs 1-40 as if fully set forth at length herein.

42. Plaintiff is over sixty (60) years of age.

43. Defendant terminated Plaintiff's employment.

44. At all times, Plaintiff was qualified to perform the work for which she was hired by Defendants.

45. Upon information and belief, subsequent to her termination Plaintiff's job duties were divided up amongst other younger employees.

46. As set forth above, Plaintiff was treated less favorable than other younger employees.

47. As such, Defendant has violated the Age Discrimination in Employment Act, 29 U.S.C.A. §621, et seq.

48. As a proximate result of Defendants' conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, mental anguish, humiliation, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of earning power and capacity and a claim is made therefore.

49. As a result of the conduct of Defendants' owners/management, Plaintiff hereby demands punitive damages.

50. Plaintiff demands attorney fees and court costs.

**COUNT III –
VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
(Hostile Work Environment; 42 U.S.C.A. § 2000 et seq)**

52. Plaintiff incorporates paragraphs 1-51 as if fully set forth at length herein.

53. Defendants employed fifteen (15) or more employees in 2015.

54. Plaintiff was subjected to harassment by a younger male employee due to her age/gender while being employed by Defendants.

55. The aforementioned actions and conduct were severe, pervasive and continuous and created a hostile work environment for Plaintiff to work within.

56. Defendants' conduct, as set forth above, violated Title VII of the Civil Rights Act of 1964.

57. As a proximate result of Defendants' conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, mental anguish, humiliation, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of their earning power and capacity and a claim is made therefore.

COUNT IV – NEW JERSEY LAW AGAINST DISCRIMINATION

58. Plaintiff incorporates paragraphs 1-57 as if fully set forth at length herein.

59. At all times material hereto, and pursuant to the New Jersey Law Against Discrimination, N.J.S.A 10:5-12, an employer may not discriminate against an employee based on age or disability or complications arising therefrom.

60. Plaintiff is a qualified employee and person within the definition of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12.

61. Defendants are “employers” and thereby subject to the strictures of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12.

62. Defendants’ conduct in terminating Plaintiff is an adverse action, was taken as a result of her age and in retaliation for making a complaint of a hostile work environment and constitutes a violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12.

63. As a proximate result of Defendants’ conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, mental anguish, humiliation, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of her earning power and capacity and a claim is made therefore.

64. As a result of the conduct of Defendants’ owners/management, Plaintiff hereby demands punitive damages.

65. Pursuant to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12, et seq, Plaintiff demands attorneys fees and court costs.

WHEREFORE, Plaintiff, Michelle Wei, demands judgment in their favor and against Defendants jointly and severally in an amount in excess of \$150,000.00 together with:

- A. Compensatory damages, including but not limited to: back pay, front pay, past lost wages, future lost wages. Lost pay increases, lost pay incentives, lost opportunity, lost benefits, lost future earning capacity, injury to reputation, mental and emotional distress, pain and suffering and personal injury damages;
- B. Punitive damages;
- C. Attorneys fees and costs of suit;

D. Interest, delay damages; and,

E. Any other further relief this Court deems just proper and equitable.

LAW OFFICES OF ERIC A. SHORE, P.C.

BY: s/ Graham F. Baird
GRAHAM F. BAIRD, ESQUIRE
Two Penn Center
1500 JFK Boulevard, Suite 1240
Philadelphia, PA 19110

Attorney for Plaintiff, Michelle Wei

Date: 02/27/2018

EXH. A

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Michelle Wei
22 Eldridge Drive
East Brunswick, NJ 08816

From: Newark Area Office
283-299 Market Street
Two Gateway Center, Suite 1703
Newark, NJ 07102

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

524-2017-00071

Rayba Watson,
Enforcement Supervisor

(973) 645-6021

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

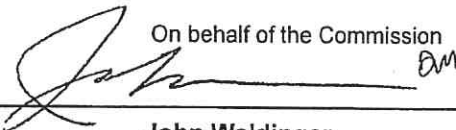
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

Enclosures(s)

On behalf of the Commission

John Waldinger,
Area Office Director

11/29/17
(Date Mailed)

cc: Barbara Pennington
Sr. Director Employee Relations
HOME DEPOT
2455 Paces Ferry Road, C-21
Atlanta, GA 30339

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